

By: Geren

H.B. No. 1796

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of consumer reporting agencies;
providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle E, Title 3, Finance Code, is amended by
adding Chapter 158 to read as follows:

CHAPTER 158. CONSUMER REPORTING AGENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 158.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the banking commissioner of
Texas.

(2) "Consumer" means an individual who resides in this
state.

(3) "Consumer report" has the meaning assigned by
Section 20.01, Business & Commerce Code.

(4) "Consumer reporting agency" means a person that
regularly engages wholly or partly in the practice of assembling or
evaluating consumer credit information or other information on
consumers to furnish consumer reports to third parties for monetary
fees, for dues, or on a cooperative nonprofit basis. The term does
not include a business entity that provides only check verification
or check guarantee services.

(5) "Department" means the Texas Department of
Banking.

1 (6) "Principal," in connection with management of a
2 license holder or applicant, means a person who performs executive
3 functions or otherwise controls the executive affairs of a license
4 holder, including an owner, officer, director, partner, trustee, or
5 manager of the license holder.

6 [Sections 158.002-158.100 reserved for expansion]

7 SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION

8 Sec. 158.101. ADMINISTRATION. The department shall
9 administer this chapter.

10 Sec. 158.102. RULES. (a) The Finance Commission of Texas
11 may:

12 (1) adopt rules necessary to enforce and administer
13 this chapter, including rules relating to an application for a
14 license; and

15 (2) adopt rules to accomplish the purposes of Chapter
16 20, Business & Commerce Code, and any other law applicable to a
17 consumer reporting agency, including rules reasonable or necessary
18 to:

19 (A) implement and clarify Chapter 20, Business &
20 Commerce Code; and

21 (B) defray the cost of enforcing Chapter 20,
22 Business & Commerce Code, and any other law applicable to a consumer
23 reporting agency.

24 (b) In adopting rules under this section, the Finance
25 Commission of Texas shall consider the necessity to:

26 (1) promote a stable consumer reporting environment;
27 and

1 (2) provide adequate protection to consumers and their
2 personal identifying information.

3 [Sections 158.103-158.200 reserved for expansion]

4 SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

5 Sec. 158.201. LICENSE REQUIREMENT. A consumer reporting
6 agency may not engage in the practice of assembling or evaluating
7 consumer credit information or other information on consumers for
8 the purpose of furnishing consumer reports to third parties for
9 monetary fees, for dues, or on a cooperative nonprofit basis,
10 unless the consumer reporting agency holds a license issued under
11 this chapter.

12 Sec. 158.202. APPLICATION. (a) An application for a
13 license must be in writing, sworn to, and filed with the
14 commissioner in the form the commissioner prescribes.

15 (b) The application must:

16 (1) state the full legal name, federal taxpayer
17 identification number or social security number, and business
18 address of:

19 (A) the applicant;

20 (B) each individual who is a principal of the
21 applicant; and

22 (C) each individual who is a principal of any
23 person that is a principal of the applicant; and

24 (2) disclose any other information that may be
25 required by rule or reasonably requested by the commissioner.

26 Sec. 158.203. ACCOMPANYING FEE, STATEMENTS, AND BOND. An
27 application for a license must be accompanied by:

1 (1) a nonrefundable application fee in an amount
2 established by rule that is sufficient to administer this chapter;

3 (2) audited financial statements of the applicant that
4 are reasonably satisfactory to the commissioner;

5 (3) the address of the home office of the applicant and
6 of the main office of the applicant in this state; and

7 (4) a surety bond in the amount of \$100,000 that is:

8 (A) in a form satisfactory to the commissioner;
9 and

10 (B) issued by a bonding company or insurance
11 company authorized to do business in this state.

12 Sec. 158.204. ISSUANCE OF LICENSE. On the filing of an
13 application that meets the requirements of Sections 158.202 and
14 158.203, the commissioner shall issue a license to the applicant if
15 the commissioner:

16 (1) approves the documents; and

17 (2) finds that the bond is in the prescribed amount.

18 Sec. 158.205. DENIAL OF LICENSE; HEARING. (a) A hearing
19 must be held before a license may be denied.

20 (b) The commissioner shall give the applicant notice of the
21 hearing.

22 [Sections 158.206-158.300 reserved for expansion]

23 SUBCHAPTER D. REQUIREMENTS TO MAINTAIN LICENSE

24 Sec. 158.301. INSUFFICIENT BOND. (a) If the commissioner
25 at any time reasonably determines that the bond required by this
26 chapter is insecure or deficient in amount, the commissioner by
27 written order may require the license holder to file a new or

1 supplemental bond to secure compliance with this chapter.

2 (b) The license holder shall comply with the order not later
3 than the 30th day after the date on which the order is served.

4 Sec. 158.302. ANNUAL LICENSE FEE. (a) Not later than June
5 30 of each year, a license holder shall pay to the commissioner a
6 license renewal fee in an amount established by rule.

7 (b) The fee required by Section 158.203(1) satisfies the
8 license fee requirement for the first license year or part of that
9 year.

10 Sec. 158.303. REVOCATION OF LICENSE. (a) The commissioner
11 may revoke a license:

12 (1) on a ground on which the commissioner may refuse to
13 grant a license; or

14 (2) for a violation of this chapter.

15 (b) The commissioner may investigate the business and
16 records of a license holder if the commissioner has reasonable
17 cause to believe that grounds for revocation exist.

18 Sec. 158.304. HEARING ON LICENSE REVOCATION. (a) The
19 commissioner shall give a license holder an opportunity for a
20 hearing before a license may be revoked.

21 (b) The commissioner shall give the license holder notice of
22 the hearing.

23 [Sections 158.305-158.400 reserved for expansion]

24 SUBCHAPTER E. CRIMINAL PENALTIES AND CIVIL REMEDIES

25 Sec. 158.401. CRIMINAL PENALTY. (a) A person commits an
26 offense if the person intentionally:

27 (1) makes an untrue statement of a material fact in an

1 application or report required to be filed with the commissioner
2 under this chapter; or

3 (2) violates Section 158.201.

4 (b) An offense under this section is a third degree felony.

5 Sec. 158.402. ADMINISTRATIVE PENALTY. (a) The
6 commissioner may impose an administrative penalty on a person in an
7 amount specified by the commissioner if, after notice and hearing,
8 the commissioner finds the person has violated:

9 (1) this chapter;

10 (2) a rule adopted under this chapter; or

11 (3) an order of the commissioner issued under this
12 chapter.

13 (b) The amount of the penalty may not exceed:

14 (1) \$1,000 for each violation; or

15 (2) \$1,000 for each day the violation continues.

16 (c) The amount of the penalty amount shall be based on:

17 (1) the seriousness of the violation, including the
18 nature, circumstances, extent, and gravity of the violation;

19 (2) the history of previous violations;

20 (3) the amount necessary to deter a future violation;

21 (4) efforts to correct the violation; and

22 (5) any other matter that justice may require.

23 (d) The enforcement of the penalty may be stayed during the
24 time the order is under judicial review if the person pays the
25 penalty to the clerk of the court or files a supersedeas bond with
26 the court in the amount of the penalty. A person who cannot afford
27 to pay the penalty or file the bond may stay the enforcement by

1 filing an affidavit in the manner required by the Texas Rules of
2 Civil Procedure for a party who cannot afford to file security for
3 costs, subject to the right of the commissioner to contest the
4 affidavit as provided by those rules.

5 (e) The attorney general may sue to collect the penalty.

6 (f) A proceeding to impose the penalty is considered to be a
7 contested case under Chapter 2001, Government Code.

8 Sec. 158.403. SUIT BY ATTORNEY GENERAL. The attorney
9 general may sue on behalf of claimants on the bond required by
10 Section 158.203(4) in a district court in Travis County, either in
11 one action or successive actions.

12 SECTION 2. This Act takes effect September 1, 2005.